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JAMES H. McKEN

Supplemental Brief for Defendants in Error

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.

vs.

LAURA PATTERSON ET AL.

In Error to the Court of Appeals of Maryland.

Supplemental Brief for Defendants in Error,
Filed by Special Leave of the Court.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
For Laura Patterson and Others.
FRANK P. CLARK,
For Mary Coles Carter and Others.

ESTHER S. BUCHANAN	IN THE
ET AL.	Supreme Court
vs.	OF THE
	UNITED STATES.
LAURA PATTERSON	OCTOBER TERM, 1902.
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—o—

In Error to the Court of Appeals of Maryland.

—o—

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

I.

Did the Court of Claims, as the Plaintiffs in Error say, **determine that William B. Buchanan, upon or after being admitted into the firm, acquired an interest in the French Spoliation claims by Assignment ?**

The Acts of January 20, 1885, March 3, 1891, and March 3, 1899, taken together, show clearly that the persons whom Congress intended to benefit were the next of kin of those citizens of the United States who prior to the ratification of the convention with the French republic of 30th September, 1800, the ratifications of which were exchanged on the 31st

day of July, 1801, had valid claims of indemnity upon the French government arising out of illegal capture, etc. (For Act of 1885, see Record, page 46.) The proceedings in evidence show that the Court of Claims ascertained that a copartnership, existing prior to the said 30th day of July, 1801, under the name of S. Smith & Buchanan, had before the date mentioned (31st July, 1801), valid claims for certain property of theirs captured by the French. And when the Court of Claims returned the findings upon which the appropriations in question were made in the Act of 3d March, 1899, they evidently meant that the payments were to be for those losses, to go to the next of kin of those persons who had suffered them.

The plaintiffs in error contend that the Court of Claims, in their findings, meant to determine that Samuel Smith and James A. Buchanan, the owners in copartnership of the property seized, assigned a one-third share, or some share, in their claims to William B. Buchanan, who was taken into partnership with them in the year 1818, and that, in consequence thereof, the next of kin of the said William B. Buchanan were entitled to share concurrently with the next of kin of Samuel Smith and James A. Buchanan, respectively.

The answer to this contention is that the Court of Claims made no such determination. If they had had any such assignment under their consideration—*whether they meant to report in favor of it or not*—it was expressly made their duty by the clear and positive words of the Act of 1885, to determine and report with the name of the assignee, "the date of the assignment, with the consideration paid therefor." (Record, page 46.) The fact that they made no such finding is conclusive proof that no assignment was recognized, no such determination made.

When, therefore, we see that the Court of Claims, notwithstanding the abundant evidence accessible to them that Samuel Smith and James A. Buchanan alone suffered the losses upon which the claims were based, made their findings, the only inference, consistent with due respect for the Court

of Claims, is that in accepting William B. Buchanan as last survivor of the firm of S. Smith & Buchanan, and admitting his administratrix as the person to receive payment of the money which was to go to the benefit of the next of kin of the original sufferers, they acted under a mistake.

It was believed by the *counsel*, who represented all the next of kin of the original sufferers or claimants, that William B. Buchanan was a member of the firm in 1798, when the seizures occurred. The Petition of Esther S. Buchanan (Record, page 48), set up no assignment, but averred simply that William B. Buchanan was "survivor of the firm of Smith & Buchanan." The inconsistency perceivable in the findings of facts, pointed out in our Brief (page 15 *et seq.*) shows what an absence there was of critical investigation of evidence bearing upon the questions raised in the present Equity suit.

If a title by assignment had then been relied upon, justice to the Government would have demanded that it should be distinctly set up. In short, the fact of the *Mistake* is evident. It involved the counsel representing the claims. It was not disclosed in the bill of complaint in the present suit, and was discovered by counsel of the Defendants in Error by cross-examination of Miss Esther S. Buchanan. Upon the discovery, the Amended Answers were filed. (Record, page 28 and page 31.)

The idea, therefore, gravely insisted on in behalf of the plaintiffs in error, that, in the Court of Claims, there was an investigation of a claim of the next of kin of William B. Buchanan to take a third, or any part, of the claim by *assignment*, is purely imaginative and groundless.

All the conduct of every one concerned in the claim corroborates the fact that the insertion of Miss Buchanan as administratrix of William B. Buchanan was simply due to a mistaken notion that William B. Buchanan was one of the firm when the seizures were made.

II.

How the Court of Claims came to fall into the mistake of supposing that William B. Buchanan was a member of the firm at the time of the Seizures by the French.

At an examination before a commissioner in Baltimore on a commission issued from the Court of Claims, Charles W. Russell being present for the United States, Miss Esther S. Buchanan testified as follows:

> "2d question (by petitioner's counsel). State what you know of a partnership known as S. Smith & Buchanan, who were the members of it, and who was the survivor?
>
> 2d answer. The firm consisted of James A. Buchanan, my grandfather, Samuel Smith, and William B. Buchanan, my father. Samuel Smith was the brother of my grandmother on my mother's side, William B. Buchanan, my father, was the survivor of the firm.
>
> (Objected to as hearsay.)
>
> 3d question. State where this firm was in business, and when, to the best of your information?
>
> 3d answer. In the city of Baltimore, during the last part of the last century and the first part of this century. I think the firm carried on business on Gay street." Record, page 50.

It is not surprising that counsel and the Court of Claims relied on this explicit statement of Miss Buchanan, and did not institute a careful examination of the voluminous documentary evidence filed in the case. (See also Miss Buchanan's Petition in the case of the Jane, Record, page 48.)

III.

Did Congress, in making the appropriations, act upon the theory that William B. Buchanan had title as Assignee?

The language of appropriation on the one claim is to "Esther S. Buchanan, administratrix, representing Smith & Buchanan," and on the other claim, "Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased." (Record, page 95, 30 Stat. at L. 1161 to 1205.) There is nothing, therefore, on the face of either appropriation to indicate a title by assignment; and, on the other hand, we have the positive declaration in the proviso prefixed to all the appropriations for French Spoliation Claims, and consequently applying to each of these, which, as the same words were interpreted in Blagge vs. Balch, in effect provided that no assignee should be allowed to take, and, also, in this Act of March 3, 1899, the further peremptory proviso at the end of this class of appropriations, "Provided, however, that any French Spoliation Claim appropriated for in this Act shall not be paid if held by assignment." (30 Stat. at L. 1205 and Record, page 96.)

If, at any time, any French Spoliation Claims held by assignment have been paid by Congress, inadvertently or otherwise, that is something with which we have nothing to do. Clearly, under the Act of 1899, Congress intended that no assignments should be recognized, and expressly provided that no French Spoliation Claim appropriated for therein should be paid if held by assignment. If in any exceptional cases Congress has departed from its rule of making the appropriations for the next of kin of the original sufferers, doubtless its intention to make such departure was manifested unambiguously.

IV.

The Plaintiffs in Error charge, in their first supplemental brief, entitled "Reply, etc.," that the counsel representing the claims of S. Smith & Buchanan in the Court of Claims acquiesced in the making by that Court of Findings which, as the Plaintiffs in Error construe them, amount to a determination *in favor* of the next of kin of William B. Buchanan,

and *adverse* to all the next of kin of Samuel Smith and all the next of kin of James A. Buchanan, except the Plaintiffs in Error—to the effect that William B. Buchanan acquired a good title by assignment to an interest in the claim. This is tantamount to an allegation that all the counsel employed for the common interest of all the next of kin of both Samuel Smith and James A. Buchanan, including in the latter Miss Buchanan and her brother, grossly violated their professional duty, by procuring for these two of their clients a great advantage, to the detriment of all their other clients, and this without notifying the latter that any such question was in issue, or affording them an opportunity to appear and resist the pretension so set up adversely to them. This reflection upon the honor of the counsel who represented all the claimants under S. Smith & Buchanan collectively in the Court of Claims is not justified by a scintilla of evidence, was not alleged in the bill, nor set up in the Maryland Court, and is broached for the first time in argument here. We think this Court will believe that it is impossible that the counsel in the Court of Claims could have been guilty of conduct so unprofessional.

In truth, the whole current of events, all the conduct of the parties, shows that, as the Court of Appeals of Maryland has found as a fact, the counsel supposed, and the Court of Claims was led to suppose, that William B. Buchanan was a partner in the house of S. Smith & Buchanan before and at the time of the French seizures.

V.

By the true construction of the proviso attached to the Act of Appropriation, the persons named in the Act as payees are directed to distribute the money among the next of kin of the original sufferers, thus necessarily leaving the Courts having jurisdiction of the subject-matter and of the parties to decide all questions involved in the distribution among the next of kin of those who as owners of the captured vessels or cargoes at the time of seizure, were the original claimants.

The proviso begins: "That in all cases where the the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin"—that is, next of kin of the original sufferers. The Act continues: "And the awards in the cases of individual claimants;" by which expression, Congress meant "individual claimants as contradistinguished from corporations." 162 U. S., 460. And it necessarily meant cases of individual *original* claimants, or original sufferers, and not cases prosecuted at the date of the act by individual administrators or trustees. For, whether the claim was prosecuted by an individual or corporation as trustee or administrator was obviously immaterial. In the cases then of individual original sufferers, the Act goes on to direct that the awards "shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin." Whose next of kin? Next of kin of their own decedents? Clearly not, for if that were the construction, the plaintiff in error would hold the whole fund for the next of kin of her own decedent, William B. Buchanan—a construction so manifestly inequitable as to revolt the consciences even of our friends on the other side. (Original Brief of Plaintiffs in Error, page 17.) Moreover, in some cases, the Act does not mention of whose estates the payees were administrators—as for instance, the appropriation here to "Esther S. Buchanan, administratrix, representing Smith and Buchanan." The only alternative is that Congress meant *next of kin of the original sufferers*, the original "individual claimants."

This is the construction adopted by this Court in *Blagge* vs. *Balch*.

For instance, it was there said:

> "The fund passed to persons of the blood *of the original sufferers*, or who might be entitled under the Statutes of Distributions which had been provided in each State." 162 U. S., 462.

And again:

> "It appears to us that Congress intended that the next of kin should be the beneficiaries in every case; that the limitation is express; that creditors, legatees and assignees, *all strangers to the blood are excluded.*" 162 U. S., 460.

Still again:

> "Congress *in order to reach the next of kin of the original sufferers*, capable of taking at the time of distribution, on principles universally accepted as most just and equitable, intended next of kin according to the statutes of distribution of the respective States of the domicile of the *original sufferers.*" 162 U. S., 464.

In other words, the proviso was construed as if it had in terms said: "Provided that in all cases where the original claimants were individuals the fund shall be distributed, by the personal representatives to whom as trustees the appropriations are to be paid, among the next of kin of the original sufferers." In clear cases, the trustees may safely make the distribution on their own authority; in cases of doubt, they should ask the direction of a Court of Equity, which would always have jurisdiction to determine all disputed questions of fact and protect both trustee and *cestuis que trust.*

It follows necessarily that such Courts of Equity must have power to determine who were the original sufferers in the case of each vessel or cargo, if any question in respect to that point be raised. Even if Congress *might* by unambiguous language have declared that William B. Buchanan or any other stranger should be conclusively taken to have been an original sufferer, still in the absence of such clear expression Congress cannot be believed to have shut off judicial inquiry as to the actual facts.

VI.

Even if the appropriation had been expressly made to a firm composed of Samuel Smith, James A. Buchanan and William B. Buchanan, yet

anyone who had obtained that appropriation by fraud or breach of trust, would be held in equity as trustee ex maleficio for the defrauded or injured party.

A strong and recent case in this Court laying down this principle of equity is *Angle vs. Chicago, St. Paul, etc., Ry.*, 151 U. S., 1, which was re-affirmed in Farmers Loan and Trust Co. vs. Railway Co., 163 U. S., 31, 47, although in the latter case it was held on the facts that no fraud was proved.

There is in this doctrine "no impugning the motives, the wisdom, or the power, of the Legislature." 151 U. S., 20. "There is no more challenge of the validity of the legislation * * * than there is a challenging the validity of a criminal proceeding by an action against the prosecutor for malicious prosecution." *Ibid.* It fully recognizes the validity of the statute, and simply requires the party to deal equitably with money, or property, which he has obtained by it.

We need not deny that by clear language the application of this equitable doctrine might be excluded. For instance, Congress might have said, "We give one-third of this money to Miss Esther S. Buchanan and her brother in spite of her breach of trust, and we leave her deceived and injured *cestuis que trust*, or parties whose fiduciary she was, no redress or means of reaching the fund." But most certainly it said nothing of this sort; and in the absence of such express declaration the doctrine of the Angle case certainly applies. "It (the Legislature) may be presumed to have left to the Courts the redress of the private wrongs." 151 U. S. 20.

The *public* interest in these French Spoilation cases is at an end when the money is paid out of the Treasury, and the obligation of the United States, legal or moral, discharged. Congress, as the custodian of the public interests, was concerned only with the validity and amount of the

claim; and is therefore, according to this Court's decisions, not to be considered as deciding questions of *private* right as to the equitable ownership of the monies paid. Said Mr. Justice Brewer, speaking for this Court, in the Angle case:

> "The Legislature may proceed with sole regard in all its actions to the public interests, with the assurance that all questions of wrong and loss between individuals will be settled in the judicial department, and that its own action in subserviency to the public interest will bar no redress of a private wrong unless such bar be absolutely necessary to the accomplishment of the public interest." 151 U. S. 21.

In this case Miss Buchanan concedes that she was the representative and fiduciary of all the defendants in error. Her deposition used before the Court of Claims stated—innocently no doubt, but nevertheless untruly—that her father was in business as a member of this firm of S. Smith & Buchanan "during the last part of the last (the 18th) century" and was the survivor of the firm. (Record, page 50.) That, in reliance upon this representation, counsel, who intended to act for the common benefit of all, shaped the proceedings in the Court of Claims and prepared the findings of that Court, is found as a fact by the Court of Appeals, and is established by the evidence. Moreover, as fiduciary, it was Miss Buchanan's duty to disclose all material facts, particularly where her own interests were concerned; yet she never disclosed until after the institution of this suit, and then only on cross-examination, that her father was only three years old in 1798. Now, this trustee, this trusted fiduciary, comes into this Court and says: "My misrepresentation has procured an Act of Congress which on *my* construction gives one-third to myself and my brother; and those who trusted me to act as an impartial representative of their claim find that although they as next of kin of the original sufferers would ordinarily, according to Congress' rule, be entitled to the money, yet a third is to be diverted from them to me and my brother."

Can a fiduciary take such a position in a Court of Equity? Does not the case clearly fall within the Angle case? In our opinion, the Act of Congress here imposes an *express* trust for the benefit of the next of kin of the original sufferers; but if not, an implied trust will be imposed by equity. As this Court said in the Angle case with reference to a legislative grant of lands:

> "While no express trust is affirmed as to the lands, yet it is familiar doctrine that a party who acquires title to property wrongfully may be adjudged a trustee *ex maleficio* in respect to that property." 151 U. S. 26.

This element of breach of trust was lacking in the overruled *nisi prius* case of Penniman vs. Hook, printed by the other side as a supplement to their brief. In that case no confidence had been reposed by the next of kin of the true original sufferer in the administratrix who prosecuted the claim. Hence, their position did not appeal so strongly to a Court of Equity as does that of the present Defendants in Error, whose confidence has been abused.

We may add that while this doctrine of the Angle case is clearly *sufficient* to warrant a decree in our favor, yet we apprehend that it is by no means *necessary*. In other words, our case does not rest on that alone.

See particularly *Stewart vs. U. S.*, 27 Ct. of Cl. 221, the case of *the Clio* cited by the Court of Appeals (Record, page 101), and stated in our original Brief, pages 9-10.

VII.

The doctrine of the Angle case is in reality an extension and application of the principle of *Johnson vs. Towsley*, (13 Wall. 72), and the other cases cited on our Brief, page 26. Another application of the same principle is found in the Alabama Claims cases, cited on our original brief, page 22.

All go upon the ground that if possible the parties adversely interested must have a right to be heard upon the questions on which in equity the private ownership of the land or the money depends.

VIII.

In refutation of the contention that the certificates given by the Court of Claims to the Secretary of the Treasury are judgments conclusive of the rights of the beneficiaries, we refer, in addition to the cases cited on this point in our original brief, to Hooper vs. U. S., 28 Ct. of Cl. 480, where that Court said:

> "Congress wished (by requiring this certificate) to protect the flesh and blood of the original sufferers from any invasion or sacrifice of right. The certificate required by the State as a prerequisite to the payment of an award at the Treasury into the hands of a personal representative does not determine the rights of beneficiaries. * * * The right to an award made by an Act of Congress is a legal right which can be the subject of an action in other courts. The final determination of a right to these statutory awards is not within the jurisdiction of this Court, and most certainly cannot be made on an *ex parte* application for a certicate." 28 Ct. of Cl. 482.

This case is cited with approval by this Court in *Blagge* vs. *Balch*, 162 U. S., 463.

IX.

The assertion of the Plaintiffs in error that there is no evidence in the record as to the rule of division between the partners after the admission of William B. Buchanan, is not conceded to be correct. James A. Buchanan in the insolvency proceedings in 1821, said "I recollect no payments which do not appear on said books, unless it be some trifling sums, less altogether than $1000, unexpectedly recovered, on accounts which had been closed, and which sums were used for family expenses, *in equal portions*, by my senior partner and myself." (Record, page 88.)

Therefore, Samuel Smith was recognized as entitled to one full half.

X.

It is obvious that in any case of partnership changes, the firm as secondarily constituted, may and often does in commercial practice, take charge of, or, if legal formalities are observed, hold the legal title to, and proceed to collect claims belonging to the original firm, or firm as originally constituted, for the account, however, of the original members. A surviving partner of the later firm, or his administrator, may, therefore, well collect claims in which he has no *equitable* interest. There is no necessary inconsistency between the holding of the legal title by an administrator of a partner, and a liability on his part to account, equitably, to the representatives of the original partners.

XI.

Williams vs. Heard, 140 U. S. 529, and Butler vs. Goreley, 146 U. S. 303, have been attempted to be distinguished from this case, in the first supplemental brief of the plaintiffs (entitled Reply, etc.,) page 5, on the ground that the claims under the Alabama Act were "claims tantamount to property rights, transmissible in all respects as property and totally different from these claims which were mere gratuities, gifts of grace, in which no parties had any legal rights, in any way transmissible at all."

But, even if such a difference existed to the full extent claimed, it would not prevent the cases in question from being authority on the point for which we have cited them in our Brief, pages 22, 23.

In fact, however, as this Court has held, claims under the Alabama Act and claims under the French Spoliation Acts, notwithstanding the modal variances made by Congress in the treatment of them, all belong to the same genus, in that the claimants, before the passage of the Acts, had no claim, legal or equitable, upon the Government.

In Williams vs. Heard, this Court said of the Alabama claimants: "No individual claimant had, as a matter of strict legal or equitable right, any lien upon the fund awarded, nor

was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund." 140 U. S. 538.

In U. S. vs. Realty Co., 163 U. S. 427, this Court had occasion to consider the question of the constitutional power of Congress in respect to gifts not founded on obligation of some kind or other, and in its opinion, delivered by Mr. Justice Peckham, various cases were reviewed, in which the Government was under no legal or equitable obligation, and where therefore the gift, in a legal sense, was a mere gratuity, but a gratuity bestowed in consideration of a moral obligation. Cases under the Alabama Act were considered to be cases of this description. The Court said, in regard to them: "Thus it is seen that there were no legal claims of the holders of those war risks upon the government for the payment to them of any sum whatever. The award made by the tribunal, which was paid to the United States by Great Britain, was held to have been made to the United States as a nation, United States vs. Weld, 127 U. S. 51, and the fund itself came into the treasury as any public moneys of the country." 163 U. S., 442.

This Court, in the same opinion, proceded to say: "Among the latest examples of payments that are not of right or of any legal claim, but which are in the nature of a gratuity depending upon equitable considerations, are the cases just decided by this Court of Blagge vs. Balch, Brooks vs. Codman and Foote vs. Woman's Board of Missions, reported as one case in 162 U. S. 439." 163 U. S. 442, 443.

XII.

The case of Allen vs. Smith, 173 U. S., 389—like U. S. vs. Realty Co. a case arising under an Act for the benefit of manufacturers of sugar who had been prevented from receiving the bounty held out by the Tariff Act of 1890 by the repeal of the latter—in recognizing the necessity of

some moral obligation to justify, constitutionally, a donation by Congress, this Court in its opinion, delivered by Mr. Justice Brown, said, with reference to a certain suggested distinction: "This dissociates the bounty altogether from the motive which actuated Congress in granting it, and turns it into a mere donation of so much money, which it cannot be presumed to have made, even if it had the power. Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized. To grant a bounty irrespective altogether of these considerations would be an act of pure agrarianism; and *to determine who is entitled to the benefit of the bounty is but little more than to determine who has rendered the consideration.*" 173 U. S. 402.

(The italics are not in the report.)

Now in the present case, without at all raising any question as to what it may be in the *power* of Congress to do, in the way of free bestowment of money out of the treasury of the country, we believe it is allowable to urge that it must be presumed that Congress did not mean to go beyond the range of the "equitable consideration" which induced it to make provision at all for the representatives of the sufferers by French spoliation; that it could never be the intention to deprive those within the consideration representatively, namely the next of kin of original sufferers, of any part of the gift, for the benefit of the representatives of an individual wholly out of the scope of the "consideration"—a mere stranger.

If such was not, presumably, within the intention of Congress, Equity, we submit, has full jurisdiction to carry into effect the expressed general intention as applied to the facts of the present case, under the circumstances of the present case.

We respectfully submit that there was no error in the decree of the Court of Appeals of Maryland, and that the reasons given in the opinion of that learned Court (Record, pages 97–102), fully justify their decision.

Respectfully submitted,

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
For Laura Patterson and Others, Defendants in Error.
FRANK P. CLARK,
For Mary Coles Carter and Others, Defendants in Error.

NOTE—

In the brief filed by the Attorneys for the Plaintiffs in Error, entitled "Reply of Plaintiffs," etc., occurs the following passage:

Page 4—"Therefore, the facts found by the Maryland Court of Appeals are, that all the conclusions of law and fact appearing in the Findings of the Court of Claims and the action of Congress in strict accordance with those findings, were the result of the consent, authority and instructions to that effect, *given this plaintiff in error*, by the parties who are now here as defendants in error, *whose own chosen counsel framed*, in the name and for the benefit of the plaintiff in error, the very terms of the findings of the Court of Claims and of the Acts of Congress which gave her her rights. In a word, what the plaintiff in error did or what was done in her name, by *counsel actually chosen by and representing the defendants in error*, and instructed by them, was pursuant to what the defendants in error then denominate in their brief 'the good understanding between the *cestuis que trustent* and the claimant,' Esther S. Buchanan, administratrix of William B. Buchanan." (Italics mine.)

This is only one of a number of similar statements found in this brief all tending to give the impression that Miss Buchanan was represented in the Court of Claims by her own counsel, and that, therefore, all other parties interested in the distribution of the fund, in this case, are estopped from making any claim which was not duly presented to the Court of Claims, when the matter was there for the action of that Court.

These statements are wholly erroneous. The fact is that the counsel who appeared in the Court of Claims represented the next of kin of Wm. B. Buchanan and also and *equally* the next of kin of James A. Buchanan and of Samuel Smith, and it was their duty to protect all alike.

It is a fact, however, that no question arose then or was even hinted or suspected that any conflict would ever arise between the parties, in the matter of the distribution of the fund when collected, the agreement and the sole agreement between the counsel in the Court of Claims and claimants was that they, their counsel, should collect the several amounts claimed from the Government, turn the money over to the persons authorized to receive the same, and this done, their employment came to an end. Counsel in the Court of Claims were no more responsible for the distribution of the monies when collected than they were for the expenditure by any one of the next of kin of the share that might be eventually awarded to him.

The amounts claimed under the various petitions were collected and duly paid over to the several administrators—that coming to Miss Buchanan was paid her early in July of 1899, and the counsel who had collected the same were then relieved from any further connection with the matter.

The bill in this case was filed on August 17, 1899, and the counsel now representing Miss Mary Coles Carter and others, Defendants in Error, was not retained to protect their interest until about the middle of September of that year.

It thus clearly appears that the argument so persistently pressed upon the Court that the present Plaintiffs in Error are entitled to some advantage growing out of the laches of counsel alleged to have represented Miss Buchanan in the Court of Claims is founded upon an utterly false assumption of evidence.

FRANK P. CLARK,